

REMARKS

Reconsideration of the present application is respectfully requested. Claims 1-5, 7-13 and 19-24, 30, 37, 41 and 45-47 have been amended. Claims 25-48 have been canceled in this amendment. Claims 14-18, 38 and 39 were previously canceled. Claim 49 is newly added. No new matter has been added.

Claims 1-13, 19-24 and 49 remain pending.

Summary of Office Action

The Oath/Declaration was objected to as being defective for failing to include the complete addresses of inventors Eylon and Ramon. The specification was objected to as not including a description of Fig. 7 in the "Description of the Drawings" section.

Claims 1-13, 23-27 and 40 -48 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1, 2, 4, 22, 23, 31 and 42 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-13, 19-25, 30-37 and 40-48 stand rejected under 35 U.S.C. § 103(a) based on U.S. Patent no. 6,633,898 of Seguchi et al. ("Seguchi") in view of the background section (of Seguchi) or in view of U.S. Patent no. 6,839,765 of Sato ("Sato").

Oath/Declaration

The Oath/Declaration was objected to as being defective for failing to include the complete addresses of inventors Eylon and Ramon. During a telephone call between the Examiner and Applicants' representative (the undersigned) on September 9, 2005, the Examiner informed Applicants' representative (the undersigned) that to overcome this objection, it would be sufficient to submit a Supplemental Declaration signed by only the two inventors in question, Eylon and Ramon. Accordingly, enclosed with this

response is a Supplemental Declaration, signed by inventors Eylon and Ramon, which includes complete and current address information for those two individuals.

It is believed that the objection has thereby been overcome. Withdrawal of the objection is therefore respectfully requested.

Specification

The specification was objected to as not including a description of Fig. 7 in the "Description of the Drawings" section. Accordingly, Applicants have amended the specification to include a brief description of Fig. 7 in the "Description of the Drawings" section. No new matter has been added.

It is believed that the objection has thereby been overcome. Withdrawal of the objection is therefore respectfully requested.

Section 112(2) Rejection

Claims 1, 2, 4, 22, 23, 31 and 42 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite, for failing to provide sufficient antecedent basis for certain claim terms. Accordingly, claims 1, 2, 4, 22, 23 have been amended to provide more clear antecedent basis for those claim terms.

As to claims 31 and 42, however, Applicants' respectfully submit that the rejection is in error. In claim 31, clear antecedent basis for the term "the source application file" is provided in line 2 of that claim. Likewise, in claim 42, clear antecedent basis for the term "the source application file" is provided in line 2 of that claim.

Therefore, withdrawal of the rejection is respectfully requested.

Section 101 Rejection

Claims 1-13, 23-27 and 40 -48 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully submit that this rejection is clearly wrong as to all of the rejected claims. The Examiner states:

The language of the claims raises a question as to whether the claims are directed to an abstract idea that is not tied to a technological environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Office Action, p. 3.

Applicants respectfully disagree. From the plain language of the claims, it is abundantly clear that the invention is not merely directed to an “abstract concept”, and that the invention is “tied to a technological environment or machine which would result in a practical application producing a concrete, useful, and tangible result.” For example, claim 1 recites:

1. (Currently amended) A method of **transmitting executable software from a server to a client computer**, the method comprising:

segmenting each of a plurality of software applications into a collection of executable blocks, to form a plurality of collections of executable blocks;

forming a startup block bundle comprising blocks executable during initialization of the plurality of software applications, at least one executable block from each of the plurality of software applications being included in the startup block bundle;

sending the startup block bundle to a client computer to **enable the client computer to execute the plurality of software applications in a streaming mode**; and

sending other blocks from the plurality of collections of executable blocks to the client computer subsequent to a start of execution of the startup block bundle. (Emphasis added.)

A claim for a process is statutory if the process is limited to a practical application in the technological arts. See *Diamond v. Diehr*, 450 U.S. at 183-84 (quoting *Cochrane*

v. Deener, 94 U.S. 780, 787-88 (1887)). “A claim is limited to a practical application in the technological arts when the method, as claimed, produces a concrete, tangible and useful result.” MPEP § 2106 (IV.)(B.)(2.)(b) (emphasis added).

Claim 1 is directed to a method of transmitting executable software from a server to a client computer, which includes (among other things) “sending the startup block bundle to a client computer to enable the client computer to execute the plurality of software applications in a streaming mode” (emphasis added). This is clearly a practical application in the technological arts. Furthermore, this recited functionality represents a concrete, tangible and useful result. For at least this reason, claim 1 and all claims which depend on it recite statutory subject matter. The Examiner’s contention that the method of claim 1 could be considered merely an “abstract idea” simply does not withstand scrutiny.

Independent claim 19 includes a similar limitation to that in claim 1 emphasized above. Therefore, for similar reasons, claim 19 and all claims which depend on it also recite statutory subject matter.

Claim 23 recites:

23. (Currently amended) **A computer readable storage medium** storing instructions for configuring a computer to:
send to a client terminal a key value identifying a streamable block;
receive a response from the client terminal indicating whether the client terminal has a locally stored copy of the block; and
send the block to the client terminal if the client terminal does not have a locally stored copy. (Emphasis added.)

Statutory subject matter under 35 U.S.C. § 101 includes (among other things) machines and articles of manufacture. Claim 23 is directed to “[a] computer readable storage medium” storing instructions for configuring a computer” to perform certain

operations. A computer readable storage medium is an article of manufacture and/or a machine. “[A] claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory.” MPEP § 2106 (IV.)(B.)(1.)(a.) (emphasis added). Furthermore, the Commissioner of Patents and Trademarks has adopted the position that, “computer programs embodied in tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101.” *In re Beauregard*, 53 F.3d 1583, 1584 (Fed. Cir. 1995).

Therefore, claim 23 clearly defines statutory subject matter.

For the above-stated reasons, the rejection under § 101 is improper as to all of the rejected claims. Applicant therefore respectfully requests that the rejection be withdrawn.

Prior Art Rejection

The Examiner has maintained essentially the same prior art rejection as in the previous Office Action. In particular, claims 1-13, 19-25, 30-37 and 40-48 were rejected under 35 U.S.C. § 103(a) based on U.S. Patent no. 6,633,898 of Seguchi et al. (“Seguchi”) in view of the background section (of Seguchi) or in view of U.S. Patent no. 6,839,765 of Sato (“Sato”).

The present invention relates generally to streaming of software applications. More particularly, embodiments of the invention relate to the ability to stream a suite of software applications from a server to a client. As one example, a user may wish to

stream Microsoft's Office suite, which includes multiple software applications, from a server to a client.

The rejection is improper, because the cited combination of Seguchi and Sato fails to disclose all of the limitations in any of Applicant's claims. Moreover, the significant differences between the present invention and what is disclosed in Seguchi/Sato are such that the present invention would not be obvious based on these references, whether taken individually or in combination.

1. The cited references do not disclose or suggest forming a *startup block bundle* as recited in Applicants' claims.

Seguchi discloses a method for implementing a multi-module, distributed processing system that can shift computational loads from one machine to another. This is done by loading identical modules on both clients and servers, so that the same task can be performed by either a client or a server. During execution, a decision is made regarding which module will be executed on which machine, based on the actual load sensed by the system as a whole.

Claim 1 requires segmenting each of a plurality of software applications into a collection of executable blocks, and forming a startup block bundle (formerly called "InitBlock Bundle") comprising blocks executable during initialization of the plurality of applications, at least one executable block from each of the plurality of software applications being included in the startup block bundle. Neither Seguchi nor Sato discloses or suggests forming such a startup block bundle.

The Examiner mistakenly contends that Seguchi's "initial setting module" reads on the "startup block bundle" in Applicants' claims (Office Action, p. 4). An initial setting

module in Seguchi is used to acquire a particular service module for performing a particular service. See Seguchi, col. 4, lines 43-47; col. 12, lines 54-56; col. 14, lines 8-52 and Fig. 10. An initial setting module in Seguchi does not include at least one executable block from each of a plurality of software applications, in contrast with the startup block bundle recited in Applicants' claims.

Furthermore, Sato also does not disclose or suggest forming such a startup block bundle. Therefore, the cited references do not disclose or suggest all of the limitations of Applicants' claim 1, individually or in combination. Furthermore, there is no motivation in the cited art to provide such functionality, nor is there any indication of its desirability. Therefore, the present invention also cannot be considered obvious in view of the cited art.

For at least this reason, therefore, claim 1 and all claims which depend on it have patentable merit over the cited art.

Claims 19 and 49 include limitations similar to those discussed above with respect to claim 1. Therefore, claims 19 and 49 and all claims which depend on them are also patentable over the cited art for similar reasons.

For at least the above-stated reasons, all pending claims are patentable over the cited art.

2. The cited art does not disclose or relate to *application streaming*.

All of Applicants' claims relate to and explicitly recite (in various different ways) software application streaming. The Examiner states that "Segichi does not clearly disclose the applications are in streaming mode." Office Action, p. 5 (emphasis added;

the fact is, Seguchi does not even remotely suggest it). However, the Examiner cites Sato as disclosing streaming and contends it would be obvious to combine the teachings of Sato with those of Seguchi.

Sato relates to streaming of multimedia data, not software applications. A software application includes executable code, by definition, and this is also explicitly recited (albeit unnecessarily/redundantly) in Applicants' claims. In contrast, multimedia data is not executable. Multimedia data can be played by an appropriate player, but it cannot be "executed". The multimedia player itself may be formed of executable code, but the multimedia data is not.

Hence, Sato does not relate to, disclose or suggest streaming a software application. Likewise, Seguchi also does not suggest streaming a software application, as admitted by the Examiner. For this additional reason, therefore, the cited references fail to disclose or suggest, individually or in combination, all of the limitations of any of Applicants' independent claims.

Furthermore, because of the significant differences between data streaming and application streaming, application streaming in accordance with the present invention would not have been obvious, at the time the invention was made, in view of the cited references. The data in a streamable data file (such as multimedia) are inherently organized sequentially, according to the order in which the file will be played. However, software applications are not inherently organized sequentially. In many if not most modern software applications, blocks of code are executed in an order which often has little or no relationship to the order in which they appear in the files which contain them (e.g., the order of the program listing). Modern software applications generally include

many branches, jumps, loops, function calls, procedure calls, etc., which make the order in which the code is written/listed/stored essentially irrelevant to the order of execution.

This is not a trivial distinction. This difference alone (and there are others) creates design obstacles that are unique to application streaming. Consequently, techniques for data streaming, such as discussed in Sato, have little or no relevance to application streaming per the present invention. Hence, application streaming in accordance with the present invention would not have been obvious, at the time the invention was made, in view of the cited art.

From the above discussion, it should be apparent that not all of the limitations of Applicants' independent claims are disclosed in the cited art. Aside from that, the present invention would not be obvious to one of ordinary skill in the art, at the time the invention was made, in view of the cited art.

Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Conclusion

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated:

11/9/05


Jordan M. Becker
Reg. No. 39,602

Customer No. 08791
12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025
(408) 720-8300